

IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR. JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 17239 OF 2006

Between:

M/s. Sri Harsha Constructions,
Yellareddyguda, Ameerpet, Hyderabad,
Rep. by its Managing Partner
Sri Nallamothu Venkateswara Rao

Petitioner

AND

The Commercial Tax Officer,
Vengalrao Nagar Circle,
Hyderabad and another

Respondents

Dated: 30th August, 2006

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a partnership firm engaged in the business of works contract. The petitioner undertakes such contracts either directly from the contractee or in some cases from a contractor in whose favour contract is already awarded, as a sub-contractor. The petitioner is also a dealer within the meaning of Section 2(e) of the A.P. General Sales Tax Act, 1957(for brevity the Act) and

is liable to pay tax under the Act, by virtue of Sec. 5F of the Act, insofar as the value of goods utilized in the execution of the said works contract. Under Sec. 5-H^[1] of the Act, the bodies enumerated therein, the Central Government or the State Government, etc. are obligated to deduct from out of the amount payable by such bodies to a dealer, in respect of the works contract executed for such bodies, such amount, as may be prescribed. Under Sub-Sec. (2), the tax amount so deducted, is required to be remitted to the State Government. Under Sub-Sec. (3), the authority making deductions pursuant to the obligation under Sub-Sec. (1) (for the purpose of convenience referred to as contractee), is required to furnish to the dealer from whom such deduction is made, a certificate containing such particulars of deduction, as may be prescribed. Under Sub-Sec. (6), wherever such amount is deducted and remitted, as contemplated under Sub-Sec. (1) and (2), same amount shall be given credit to while determining the tax liability of the dealer, as and when assessment is completed.

Under fourth proviso to Sec. 5F of the Act, the Legislature took note of the fact that there is a possibility of the contractor engaged business of the execution of the works contract delegating/sub-contracting his rights and obligations in favour of the sub-contractor and, therefore,

provided that whenever there is such an assignment in favour of a sub-contractor either wholly or partially, the dealer (contractor) is not liable for any tax under Sec. 5F of the Act, subject to the condition that the contractor establishes the fact that the sub- contractor is a registered dealer under the Act and that amount passed on by the contractor to the sub-contractor is included in the return of the turnover, filed by the sub-contractor.

One of the contractors, who had passed on his obligations under the works contract to the sub-contractor, earlier, sought clarification from the State Government, as to the necessity of the contractor deducting any further amount at the time of making payments to the sub-contractor. Dealing on the subject, the Commissioner, Commercial Taxes, issued circular No. CCT's Ref. A1(2)/2825/96 dated 2.1.1997, relevant portion of which, reads as follows:

“...1. Whether they can deduct tax at source from the payments made to sub-contractor, as they are company incorporated outside India.

2. If so, whether it would be necessary for M/s. Andhra Pradesh Gas Power Corporation Limited to deduct tax at source on payments due to them for the same work.

According to Sec.5F of Andhra Pradesh General Sales Tax Act, 1957 and according to proviso, no tax shall be payable on the turnover relating to the amounts paid to a sub-contractor as consideration for the execution of works

contract, subject to the production of proof that such sub-contractor is a registered dealer liable to tax under the Act.

Further, according to Section 5H (Act 22 of 1996) the Central Government or State Government or an Industrial, Commercial or trading undertaking of the Central Government or of the State or a Local Authority or a Statutory Body, or a company registered under Companies Act, 1956 shall deduct from out of the amounts payable by them to a dealer in respect of works contract executed for them an amount calculated at such rate as may be prescribed, but not exceeding 3% of the total turnover and shall be remitted to Government.

Further, it is clarified that Tax Deduction at Source shall be made out of the payments made by a contractee to a contractor or sub-contractor if the payment is made by the contractee directly to the contractor or sub-contractor.

If the payment is made to the contractor and the contractor in his turn pays to the sub-contractor, Tax deduction at Source may be made out of the payments to be made by the contractee to the contractor and the contractor can furnish to the sub-contractor a copy of the certificate of Tax Deduction issued by contractee. In such cases contractor need not deduct the tax again. Sub-contractor shall file the copy of the certificate for deduction of tax at source before the assessing authority..."

From the last paragraph of the circular extracted above, it is clear that if deduction is made by contractee, while making payment to the contractor for the works contract, in fact executed by the sub-contractor, the contractor is enabled to furnish a copy of the certificate of tax deduction issued by the contractee, to the sub-contractor and whenever such copies of the certificates

are issued by the contractor to the sub-contractor, the contractor is not required to deduct any further amount towards the tax payable under Sec. 5F of the Act. The sub-contractor is required to file the said copy of the certificate evidencing deduction of the tax at source before the assessing authority, for the purpose of assessment of tax liability of the sub-contractor.

In the present case, the petitioner asserts in the affidavit filed in support of the petition, that the assessing authorities are insisting upon separate certificate, issued by the contractee in favour of the sub-contractor and in the absence of any obligation on the part of the contractee to issue such certificate, directly in favour of the sub-contractor, the sub-contractor is once again made to pay tax without any authority of law, in substance, resulting in payment of twice over on the same taxable event.

For the assessment year 2002-2003, the tax liability of the petitioner was assessed by the first respondent by his order dated 18.8.2004. Aggrieved by the same, the petitioner carried the matter in appeal before the second respondent, who in turn, set aside the assessment order for the reasons recorded by him and remanded the matter to the assessing authority for fresh assessment in terms of the order of remand. The assessing authority, once again,

passed an order dated 22.5.2006. One of the issues involved in assessing the tax is whether the petitioner is entitled to be given credit of the amount of tax deducted by the contractee in favour of the contractor M/s. Madhucon Projects Limited and M/s. Madhucon Binapuri J.V., which works, in fact, were sub-contracted to the petitioner. The first respondent rejected the claim of the petitioner in this regard. Hence, the present writ petition with a prayer as follows:

“...to issue an appropriate writ or order or direction particularly in the nature of writ of mandamus declaring the action on the part of the first respondent herein namely, the Commercial Tax Officer, Vengalrao Nagar Circle, Hyderabad, in disobeying or not complying with the clear and categorical directions of the Appellate Deputy Commissioner of Commercial taxes, Secunderabad Division, Hyderabad contained in the Proceedings dated 02.04.2005 relating to Appeal No. S/211/04-05 in regard to non-consideration and non-credit of the amounts deducted towards taxes by the main contractors in amounts of Rs.5,81,082/-, Rs.10.384/- and Rs.15,68,255 totalling to Rs.21,59,721/- at the rate of 1.2%, 1% and 4% respectively on execution of the works namely Vamshadhara Bridge, Bandar Canal and Tammileru Bridge, Sabari Bridge and demanding the tax pursuant to the impugned proceedings dated 22.05.2006 in Ref. No. PJT/13/2/2954/2002-03/APGST from the petitioner as illegal, improper, unfair, unjust without authority of law and without jurisdiction as being diametrically opposed to the clear and categorical directions contained in the appeal proceedings and also in contravention of the judgment of the Hon’ble Supreme Court in AIR 1962 SC 182 and consequently, directing the assessing authority namely, the 1st respondent

herein to consider and credit the above mentioned amounts for the purpose of computation and determination of the petitioner's liability to tax under the Andhra Pradesh General Sales Tax Act, 1957 for the assessment year 2002-03 and pending finalization of the correct liability to tax, the 1st respondent may please be restrained from enforcing the assessment Proceedings dated 22.05.2006 in Ref. No. PJT/13/2/2954/2002-03/APGST.....”

Heard the learned Government Pleader.

In the circumstances, we are of the opinion that the matter can be disposed of directing the first respondent to examine the issue afresh in the light of the circular of the Commissioner, Commercial Taxes referred to earlier (No. CCT's Ref. A1(2)/2825/96 dated 2.1.1997).

It is made clear that if the petitioner produces a copy of the certificate evidencing deduction of amount, as contemplated under Sec. 5H of the Act, issued by the contractee (in this case stated to be the Government of Andhra Pradesh) in favour of either of the above mentioned two companies, the amount so deducted shall be given credit to, while assessing the tax liability of the petitioner, insofar as it pertains to the work, which is sub-contracted to the petitioner in respect of the above mentioned two companies and where the deduction is referable to such sub-contract.

If the petitioner has not furnished copies of such

certificates, he shall produce the same within a period of four weeks from today.

The writ petition is accordingly disposed of. No order as to costs.

J.Chelameswar, J.

D.Appa Rao, J.

August 30, 2006
MAS.

[\[1\]](#) “...5-H : **Deduction of tax at source:-**

- (1) *notwithstanding anything contained in this Act, the Central Government or the State Government or an Industrial, Commercial or Trading Undertaking of the Central Government or the State Government or a Local Authority or a Statutory Body, or a company registered under Companies Act, 1956 or any other person which the Government may notify from time to time, shall deduct from out of the amounts payable by them to a dealer in respect of works contract executed for them, an amount calculated at such rate as may be prescribed, but not exceeding three per cent of the total turnover;*
- (2) *The tax deducted under Sub-Sec.(1) shall be remitted to Government in such manner and within such time, as may be prescribed.*
- (3) *The authority making deduction under sub-section (1) shall furnish to the dealer from whom such deduction is made, a certificate containing such particulars as may be prescribed.*
- (4)
- (5)

(6) Where, tax in respect of works contract is remitted under sub-section (2), the tax payable by the dealer in respect of such works contract shall be reduced by the amount of tax already remitted under the said sub-section: Provided that the burden of proving that the tax on such works contract has already been remitted and of establishing the exact quantum of tax so remitted shall be on the dealer claiming the reduction.